



BUREAU OF LAND MANAGEMENT
Eastern States Office
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**DECISION RECORD
FOR BLM EASTERN STATES
DECEMBER 2017 COMPETITIVE OIL AND GAS LEASE SALE
Determination of NEPA Adequacy
DOI-BLM-ES-0030-2017-0006-DNA**

INTRODUCTION

The Bureau of Land Management (BLM) proposes to lease, for potential oil and gas development, a total of 350.06 acres (five parcels) of federal mineral estate within the Wayne National Forest located in Monroe County, Ohio. These parcels comprise Expression of Interest (EOI) 1635 and EOI 1638, and would be a part of the December 2017 BLM Eastern States Competitive Oil and Gas Lease Sale. For these parcels, the U.S. Forest Service is the surface management agency and the BLM administers the federal mineral estate. In such instances, both agencies share responsibility for enforcing mineral leasing policies and regulations. The U.S. Forest Service gave consent to the BLM to lease the acreage, with appropriate U.S. Forest Service stipulations for the protection of surface resources.

A federal oil and gas lease is a legal contract that grants exclusive rights to the lessee to develop federally-owned oil and gas resources, but does not authorize surface-disturbing activities or obligates the lessee to drill a well on a parcel in the future. Interested parties, such as private individuals or companies, may file EOIs to nominate parcels for competitive bid and leasing by the BLM. If the parcels are leased and the lessee identifies a detailed plan for oil and gas development for the parcels in the future, an Application for Permit to Drill (APD) would have to be submitted by the lessee. During this process, the BLM would conduct future site-specific environmental analysis and any additional consultations in coordination with the U.S. Forest Service, prior to authorizing any ground disturbing activities.

The BLM prepared a draft Determination of NEPA Adequacy (DNA) (DOI-BLM-ES-0030-2017-0006-DNA) in August 2017 and updated it in September 2017 based on public comments. The BLM completed an Environmental Assessment (EA) (DOI-BLM-ES-0030-2016-0002-EA) in December 2016, to analyze the potential effects of leasing federal mineral estate underlying National Forest System lands (up to approximately 40,000 acres) within the Marietta Unit of the Wayne National Forest. The DNA confirmed that the EA analysis was still sufficient to support the leasing of 350.06 acres of federal mineral estate within the same area. The BLM also completed a Finding of No Significant Impact (FONSI) and Decision Record for the EA. In addition to the Decision Record for the DNA, all of these documents provide the required documentation under the National Environmental Policy Act (NEPA), to facilitate the orderly

exploration, development, and production of mineral and energy resources, on the proposed acreage, in a manner that avoids or minimizes adverse effects to the natural and human environment.

The Proposed Action to offer the five parcels for lease is part of an action previously analyzed in the 2006 Final Revised Land and Resource Management Plan, Wayne National Forest (2006 Forest Plan). Goal 10.1 in the 2006 Forest Plan states, "Provide a supply of mineral commodities for current and future generations, while protecting the long-term health and biological diversity of ecosystems. Facilitate the orderly exploration, development, and production of mineral and energy resources on land open to these activities" (2006 Forest Plan, p. 2-41). The BLM was a cooperating agency in the development of the 2006 Forest Plan and its related Final Environmental Impact Statement (EIS). The Forest Service signed its Record of Decision on December 14, 2005.

The Proposed Action was also assessed as part of a related review effort resulting in a Supplemental Information Report (SIR) on oil and gas that was prepared by the U.S. Forest Service in coordination with the BLM. The December 2016 leasing EA (DOI-BLM-ES-0030-2016-0002-EA) incorporates by reference the relevant information from the 2006 Forest Plan, Final EIS and the 2012 SIR, in accordance with 40 CFR 1502.21.

DECISION

As a result of the analysis presented in the DNA (DOI-BLM-ES-0030-2017-0006-DNA), it is my decision to authorize offering for lease five parcels (350.06 acres) for the December 2017 Competitive Oil and Gas Lease Sale. The Proposed Action coupled with lease stipulations, best management practices, and lease notices detailed in the EA and identified in the December 2017 Competitive Oil and Gas Lease Sale Notice demonstrate that all practicable means to avoid or minimize environmental harm have been adopted. As a result, the Proposed Action would not result in unnecessary or undue degradation of public lands and resources. The leasing EA analyzed a no action alternative, in which leases would not be issued; however, this alternative was not selected for the December 2017 Competitive Oil and Gas Lease Sale because it does not meet the purpose and need for the Proposed Action.

The BLM will issue competitive leases for parcels sold at the sale, and non-competitive leases may be issued for applications filed for two years after the sale for the unsold parcels.

AUTHORITIES

The authority for this decision is contained in the Mineral Leasing Act of 1920, as amended; the Mineral Leasing Act for Acquired Lands of 1947, as amended; the Federal Land Policy and Management Act (FLPMA) of 1976; and the Energy Policy Act of 2005.

TERMS/CONDITIONS/STIPULATIONS

Standard terms and conditions, as well as the lease notices and stipulations, identified within the Sale Notice, would apply and be attached to the lease parcels.

Additionally, any purchaser of a Federal oil and gas lease is required to comply with all applicable Federal, State, and local laws and regulations including obtaining all necessary permits required prior to the commencement of project activities, including but not limited to the following:

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- National Environmental Policy Act (1969) and the associated Council on Environmental Quality regulations at 40 CFR Parts 1500-1508
- FLPMA (1976) as amended and the associated regulations at 43 CFR Part 1600
- Mineral Leasing Act (1920) as amended and the regulations at 43 CFR Part 3100
- Clean Water Act (1977)
- Clean Air Act (1970) as amended
- National Historic Preservation Act (NHPA) (1966) as amended and the associated regulations at 36 CFR Part 800
- Endangered Species Act (ESA) (1973) as amended
- Migratory Bird Treaty Act (1918)
- Resource Conservation and Recovery Act (RCRA) (1976) as amended
- Executive Order 11988- Floodplain Management
- Executive Order 119900 – Protection of Wetlands
- Executive Order 12898 – Environmental Justice in Minority Populations and Low-Income Populations
- Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews (BLM-WO-IM 2010-117)
- State and Local Laws and regulations

PLAN CONFORMANCE AND CONSISTENCY

The DNA confirms that the Proposed Action of leasing five parcels for lease is in conformance with the 2006 WNF Land and Resource Management Plan and associated Final Environmental Impact Statement (LRMP/FEIS) and Record of Decision (ROD), as amended. The BLM was a cooperating agency in the preparation of these documents. The EA is also consistent with a related review effort resulting in a 2012 Supplemental Information Report (SIR) on oil and gas that was prepared by the U.S. Forest Service in coordination with the BLM. As part of these planning efforts, the U.S. Forest Service conducted extensive public outreach in the development of the 2006 LRMP/FEIS.

PUBLIC INVOLVEMENT

Scoping and Public Comment on the DNA

The BLM created a project website for the December 2017 lease sale that is accessible through the BLM ePlanning website (<https://go.usa.gov/xnXjK>), and provides links to documents, opportunities for public involvement, EOI information, and links to additional project information. Also, in conformance with BLM policy, the DNA was posted for a 30-day public comment period from August 7, 2017- September 6, 2017. The BLM received one comment letter that raised the following issues:

- The BLM failed to prepare an EIS
- The BLM failed to take a hard look at site-specific and cumulative impacts of leasing in the WNF
- The BLM improperly relied on a Programmatic EA to analyze the impacts of leasing on the WNF
- The BLM failed to consult with the U.S. Fish and Wildlife Service, pursuant to Section 7 of the ESA
- The BLM failed to request the U.S. Forest Service's participation in the preparation of the EA, subsequently relying on the U.S. Forest Service consent without their participation
- The BLM failed to analyze the risks of spills from pipelines and other infrastructure associated with fracking in the WNF
- The BLM failed to take into account the new information from the U.S. Fish and Wildlife Service showing a dramatic decrease in the Indiana Bat Population in Ohio and other states
- The BLM failed to take into account that several waterways pass either directly, through, or within close proximity to the December 2017 lease parcels
- The BLM failed to examine site-specific seismic risk
- The BLM failed to analyze site-specific impacts on neighboring towns
- The BLM failed to identify and analyze lease stipulations before offering parcels for lease

The BLM developed responses to these issues and updated the draft DNA with this information. The updated document was posted to the project website in September 2017.

In addition, the BLM conducted external scoping for the Draft EA, on which the DNA relies. This was accomplished through a series of public meetings, requesting public comments, and through close coordination and data sharing with the U.S. Forest Service. Public notices appeared in local newspapers including the *Marietta Times*, *Athens Messenger*, and the *Ironton Tribune* for two consecutive weeks starting on November 1, 2015. The BLM also issued a press release to various news outlets on November 2, 2015, notifying the public of dates, times, and locations of the public meetings. Public meetings were held on November 17, 2015 in Marietta, Ohio; November 18, 2015 in Athens, Ohio; and November 19, 2015 in Ironton, Ohio.

Also, during the early stages of the project, the BLM created a project website for the EA in November 2015 accessible through the BLM national NEPA register at <http://bit.ly/2xS2cQm>. The website provides links to documents, opportunities for public involvement, including methods for comment submission, maps, EOI information, and links to additional project information.

The BLM received approximately 3,400 comments during the scoping period and used the input received to develop the Draft EA. Many of the comments received during scoping reflected common themes revolving around concern about oil and gas activities on forest and wildlife habitat, toxic chemicals, degradation of water quality, air pollution, public health and safety and degradation of recreational opportunities and the visual environment within the WNF. Some comments also expressed interest in delaying leasing until the oil and gas market improves. Individuals in favor of leasing felt that restricting oil and gas development prohibits economic growth for the state of Ohio, including for those individuals that wish to develop private minerals.

In conformance with BLM policy, the Draft EA and unsigned FONSI were posted for a 30-day public comment period from April 28-May 31, 2016. The BLM received approximately 14,000 comments by email and 480 comments by U.S. postal service or FedEx. Of the comments received, BLM identified approximately 300 substantive comments and addressed them in the Final EA. Substantive comments focused on concerns about air quality and climate change, hydraulic fracturing, water quality, cumulative impacts, the NEPA process, public health, traffic, noise, environmental justice, seismic risk, private development, recreation, threatened and endangered species, private home/land values, and waste disposal. Changes made to the Draft EA are summarized in a comment matrix in Chapter 9 of the Final EA (Appendix A).

Protests (December 2017 Lease Sale)

The competitive lease sale notice was posted on the BLM National NEPA Register ePlanning site on September 13, 2017 (<https://go.usa.gov/xnXjK>). This initiated a 30-day protest period of the parcels proposed for the December 2017 lease sale. The protest period ended on October 12,

2017 and the BLM received 20 protest submissions, out of which 16 were valid protests (1 was a duplicate, 2 did not include a statement of reasons with their letter, and one was filed untimely). Of the 16 valid protest letters, one letter raised unique substantive protest issues and 15 letters expressed general concerns. After careful consideration, the BLM issued two decision letters denying the protests. One decision letter addressed the general issues identified in the 15 letters, whereas one individual decision letter was developed for the unique issues. The protest letters and decision letters may be found at the website on the BLM National NEPA Register noted above. As a result, none of the parcels offered for oil and gas leasing at the lease sale are subject to an unresolved protest.

CONSULTATIONS

The BLM conducted required consultation with the Ohio State Historic Preservation Office (SHPO) and tribes. The BLM initiated consultation with the Ohio SHPO under Section 106 of the NHPA, by letter dated November 16, 2015. To date, the SHPO has not responded to the letter, indicating that they have found no adverse effects within the scope of the Proposed Action. Further consultation would occur at the APD phase prior to ground disturbing activities. On November 6, 2015, the BLM sent certified letters to seven federally recognized tribes who have a known connection to the area notifying them of the Proposed Action and asking them to identify any concerns with respect to the Proposed Action. The BLM received a response from The Shawnee Tribe, asking that the BLM cease activity on the project if artifacts are discovered until required consultation has occurred. Further tribal consultation would occur at the APD stage.

The U.S. Forest Service has completed consultation requirements with the U.S. Fish and Wildlife Service (USFWS) under Section 7 of the ESA with respect to federally listed species in the development of the 2006 LRMP/EIS. In coordination with the USFWS, a tiered approach to future consultations was implemented. Because the BLM was a cooperating agency in the 2006 LRMP/EIS, the consultation conducted with respect to the LRMP/EIS applies to the Proposed Action analyzed in the EA. As the BLM analyzes individual projects pursuant to the 2006 LRMP, the BLM would complete the required Tier II consultation under the ESA.

RATIONALE FOR DECISION

The decision to authorize the recommended alternative is based on the following:

- Consistency with the resource management plan and the land use plan - the decision is consistent with, and in conformance with, the 2006 WNF LRMP/FEIS and ROD (January 2006).
- National Policy & Purpose and Need – The Proposed Action meets the BLM’s purpose and need for action, which is to support the development of oil and natural gas resources that are essential to meeting the nation’s future needs for energy while minimizing adverse effects to natural and cultural resources. The BLM and U.S. Forest Service minimize adverse effects to resources by identifying appropriate lease stipulations and notices, best management practices, and mitigations. It is the policy of the BLM as

mandated by various laws, including the Mineral Leasing Act of 1920, as amended (30 United States Code [USC] 181 et seq.), the Federal Land Policy and Management Act of 1976 (FLPMA), and the Energy Policy Act of 2005 to make mineral resources available for development to meet national, regional, and local needs. The oil and gas leasing program managed by the BLM encourages the sustainable development of domestic oil and gas reserves which reduces the dependence of the United States on foreign sources of energy as part of its multiple-use and sustainable yield mandate.

- Agency statutory requirements - the decision is consistent with all required federal, state, tribal, and county regulations and policies required for the implementation of the Proposed Action.
- Relevant resource issues and finding of no significant impact - as described in the EA, there would be no direct impacts associated with leasing. There is the potential for minor adverse indirect impacts to resources as a result of potential future oil and gas development; however, none of the impacts were identified as significant and therefore, a finding of no significant impact (FONSI) was prepared. Therefore, an environmental impact statement (EIS) is not required. The BLM, in coordination with the U.S. Forest Service, would conduct additional site-specific NEPA documentation at the Application for Permit to Drill (APD) stage, should future development occur. All required consultations under the ESA and NHPA, for the action of leasing, are complete.
- Application of measures to minimize environmental impacts - standard terms and conditions, as well as stipulations identified in the EA would apply, as required by 43 CFR 3131.3.

APPEALS PROCEDURES

In accordance with 43 CFR 4.411 and 4.413, any person whose interest is adversely affected by a final decision of the authorized officer may appeal the decision to the Interior Board of Land Appeals (IBLA). The appeal must be filed within 30 days after the date the proposed decision becomes final or 30 days after receipt of the final decision. In accordance with 43 CFR 4.411 and 4.412, the appeal shall state clearly and concisely the reason(s) why the appellant thinks the final decision of the authorized officer is wrong.

Pursuant to 43 CFR 4.21(b) and 4.413(a), an appellant also may petition for a stay of the final decision pending appeal by filing a petition for stay along with the appeal within 30 days after the date the proposed decision becomes final or 30 days after receipt of the final decision. At this time, the BLM will not accept protests or appeals sent by electronic mail. Within 15 days of filing the appeal and any petition for stay, the appellant also must serve a copy of the appeal, and any petition for stay, on any person named in the decision and listed at the end of the decision, and on to the appropriate Office of the Solicitor.

STANDARDS FOR OBTAINING A STAY

Pursuant to 43 CFR 4.21(b) (1), a petition for stay, if filed, must show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied;
- (2) The likelihood of the appellant's success on the merits;
- (3) The likelihood of immediate and irreparable harm if the stay is not granted; and,
- (4) Whether the public interest favors granting the stay.

Authorized Officer:

Mitchell Leverette

Mitchell Leverette

Acting State Director, BLM Eastern States

12/13/17

Date